

## CCRB INVESTIGATIVE RECOMMENDATION

|  |   |  |  |                                    |                                 |
|--|---|--|--|------------------------------------|---------------------------------|
| Investigator:<br>Jason Zachary Resnikoff         | Team:<br>Team # 4   | CCRB Case #:<br>201013918                  | <input checked="" type="checkbox"/> Force              | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S.   |
|  |   |  | <input checked="" type="checkbox"/> Abuse              | <input type="checkbox"/> O.L.      | <input type="checkbox"/> Injury |
| Incident Date(s)<br>Sunday, 10/10/2010 2:00 AM   | Location of Incident:<br>§ 87(2)(b) 47th Precinct<br>Stationhouse |  | Precinct:<br>47  | 18 Mo. SOL<br>4/10/2012            | EO SOL<br>4/10/2012             |
| Date/Time CV Reported<br>Sun, 10/10/2010 4:22 AM | CV Reported At:<br>CCRB   | How CV Reported:<br>Call Processing System | Date/Time Received at CCRB<br>Tue, 10/12/2010 11:31 AM |                                    |                                 |

| Complainant/Victim | Type       | Home Address |
|--------------------|------------|--------------|
| § 87(2)(b)         | § 87(2)(b) | § 87(2)(b)   |
| § 87(2)(b)         | § 87(2)(b) | § 87(2)(b)   |

| Witness(es) | Home Address |
|-------------|--------------|
| § 87(2)(b)  | § 87(2)(b)   |

| Subject Officer(s)   | Shield | TaxID  | Command |
|----------------------|--------|--------|---------|
| 1. POM Robert Belle  | 10552  | 939912 | 047 PCT |
| 2. SGT Naoki Yaguchi | 01324  | 937764 | 047 PCT |

| Witness Officer(s)     | Shield No | Tax No | Cmd Name |
|------------------------|-----------|--------|----------|
| 1. POF Christy Donalds | 13533     | 946683 | 047 PCT  |
| 2. POM Sidney Wise     | 02468     | 902615 | 047 PCT  |

| Officer(s)          | Allegation   | Investigator Recommendation |
|---------------------|--|-----------------------------|
| A.POM Robert Belle  | Force: PO Robert Belle pointed his gun at § 87(2)(b)                                 | § 87(2)(b)                  |
| B.SGT Naoki Yaguchi | Abuse: Sgt. Naoki Yaguchi did not process § 87(2)(b)'s complaint regarding officers. | § 87(2)(b)                  |

## Case Summary

On October 10, 2010, at approximately 2:00 a.m., PO Robert Belle and PO Christy Donalds stopped § 87(2)(b) for double parking. Later that morning, § 87(2)(b) went to the stationhouse of the 47<sup>th</sup> Precinct to file a complaint with Sgt. Naoki Yaguchi. The following allegations resulted from the officers' actions:

- **Allegation A – Force:** PO Robert Belle pointed his gun at § 87(2)(b) § 87(2)(g)

• **Allegation B – Abuse of Authority:** Sgt. Naoki Yaguchi did not process § 87(2)(b)'s complaint regarding officers. § 87(2)(g)

## Results of Investigation

### Civilian Statements

#### Complainant: § 87(2)(b)

- § 87(2)(b) is § 87(2)(b)

#### Statements:

On October 12, 2010, § 87(2)(b) filed a complaint with the CCRB through the call processing system (encl. 4A-B). On October 15, 2010, she provided a telephone statement. On October 29, 2010, she was interviewed at the CCRB (encl. 5A-E). Below is a composite of § 87(2)(b)'s statements.

On October 10, 2010, at approximately 2:00 a.m., § 87(2)(b) was in the front passenger seat of her car, a red 2007 Honda Civic Coupe, which her boyfriend, § 87(2)(b) was driving. In the backseat was the daughter of a friend, nine year old § 87(2)(b). § 87(2)(b) stopped the car on the far side of the street across from his residence at § 87(2)(b) in the Bronx, double-parking with the intention of immediately exiting the car. The street was well illuminated by street lights. A marked RMP stopped next to § 87(2)(b) and an officer told him he could not park there. § 87(2)(b) motioned to them that he would only be a short while. The RMP pulled away, circled the block, then pulled up some distance behind § 87(2)(b) and § 87(2)(b) exited the vehicle and § 87(2)(b) moved from the passenger seat to the driver's seat. § 87(2)(b) was standing on the median in the middle of the street when § 87(2)(b) began to pull away and stopped. Two officers exited the RMP, PO Robert Belle and PO Christy Donalds. PO Belle approached the driver's side of the car, while PO Donalds approached the passenger side. PO Belle asked § 87(2)(b) for her license and registration when he turned towards § 87(2)(b) who was holding his cell phone in his right hand, which he was putting in his jacket pocket, and his keys in his left. When PO Belle saw § 87(2)(b) he drew he gun, pointed at § 87(2)(b) who was approximately eight feet away, and simultaneously shouted, "What are you doing? Take your hands out of your pockets! Take your hands out of your pockets!" § 87(2)(b) lifted both hands in the air to show they were not in his pockets. PO Donalds asked for her license and registration. § 87(2)(b) provided it. When she next saw PO Belle, he had holstered his weapon and § 87(2)(b) was standing next to the car. PO Donalds issued § 87(2)(b) a summons for double-parking, and both officers left the scene.

After dropping off § 87(2)(b) went to the stationhouse of the 47<sup>th</sup> precinct. She informed an officer, PO Sidney Wise, that she wanted to make a complaint. PO Wise consulted with Sgt. Naoki Yaguchi and then returned to § 87(2)(b) to ask what happened. § 87(2)(b) told him about the stop. PO Wise consulted with Sgt. Yaguchi and again returned to § 87(2)(b) cigarette in hand, and asked her to come outside with him. § 87(2)(b) told PO Wise that it was cold outside, but PO Wise assured her it would only be a minute. Outside, PO Wise told § 87(2)(b) "Listen, I'm not telling you not to make a

complaint. If I had been there I would not have drawn my gun. But maybe the officer was scared. This is a bad neighborhood.” § 87(2)(b) was adamant in her desire to make a complaint. They returned to the stationhouse. PO Wise consulted with Sgt. Yaguchi again. PO Wise returned to § 87(2)(b) and told her she would have to wait an hour. § 87(2)(b) told him that was fine, and proceeded to wait fifteen minutes in plain view. After that time, Sgt. Yaguchi listened to § 87(2)(b)’s complaint and told her that there was no complaint to make, and that although PO Belle should not have drawn his gun he did not violate any rules. § 87(2)(b) asked if the sergeant would take the complaint and he responded that he would not.

**Victim:** § 87(2)(b)

- § 87(2)(b) is § 87(2)(b)

**Statement:**

§ 87(2)(b) was interviewed at the CCRB on December 16, 2010. The following is a summary of his statement (encl. 6A-D).

On October 10, 2010, at approximately 2:00 a.m., § 87(2)(b) was driving § 87(2)(b)’s 2007 Red Civic Coupe eastbound on 233<sup>rd</sup> street, which was well lit from street lights. In the passenger seat was § 87(2)(b) and in the backseat was the daughter of a friend of § 87(2)(b)’s. § 87(2)(b) stopped in front of his building and intended to exit the vehicle across the street from his residence at § 87(2)(b) while § 87(2)(b) would switch to the driver’s seat and drive home. As § 87(2)(b) was slowing the car to a stop, a marked RMP drove by. § 87(2)(b) signaled to the male officer, PO Belle, that he was only stopping for a minute. The RMP then went further down the block and turned right. § 87(2)(b) double-parked the car while he collected his things, including a black phone, a cell phone charger and his keys. He exited the car and crossed the street while § 87(2)(b) got in the driver’s seat. When § 87(2)(b) reached the median between the eastbound and westbound lanes of traffic, and just as § 87(2)(b) was pulling her car out, the same marked RMP finished circling the block and stopped behind § 87(2)(b). PO Belle and PO Donalds exited the car. The two officers approached § 87(2)(b)’s vehicle. § 87(2)(b) was standing on the median with both hands in his coat pockets, in which he was holding his cell phone, charger and keys. He began walking slowly to where the officers were approaching the car. Although still on the median, he was approximately seven feet away from PO Belle when the officer addressed him, asking, “Aren’t you going somewhere?” § 87(2)(b) told the officer he wanted to see what was going on. As § 87(2)(b) continued approaching, the officer drew his sidearm, pointed it at § 87(2)(b) and told him to get his hands out of his pockets. § 87(2)(b) complied immediately, holding in his hands the contents of his pockets. PO Belle told him, “Get over here,” and holstered his weapon. § 87(2)(b) approached and stood to the side of PO Belle. At one point during the incident, § 87(2)(b) asked why the officers had stopped § 87(2)(b) and PO Belle said, “It’s a summons.”

**Attempts to Contact Civilians**

§ 87(2)(b) as well as PO Donalds stated that § 87(2)(b) was asleep in the back seat of the car when § 87(2)(b) was being issued the summons for double parking. Considering § 87(2)(b) Johns was asleep during the incident, as well as her young age, she was not contacted for a witness statement.

## **NYPD Statements:**

### **Subject Officer: PO ROBERT BELLE**

- *PO Robert Belle is § 87(2)(b)*
- *PO Belle is assigned to the 47<sup>th</sup> Precinct. On the date of the incident, PO Belle was in uniform and assigned to Impact from 9:30 p.m. to 6:05 a.m. PO Belle was working with PO Christy Donalds and was assigned to marked RMP #2138.*

### **Memo Book and CCRB Statement:**

PO Belle was interviewed at the CCRB on March 10, 2011 (encl. 14A-B). He had no memo book entries related to this incident (encl. 13A-C).

On October 10, 2010, at approximately 2:00 a.m., PO Belle and PO Donalds were driving eastbound on 233<sup>rd</sup> Street when they saw § 87(2)(b)'s car double parked. The officers stopped next to her car and saw § 87(2)(b) in the driver's seat and § 87(2)(b) in the front passenger seat. The officers informed § 87(2)(b) and § 87(2)(b) that they could not park there. Either § 87(2)(b) or § 87(2)(b) said they were about to move. The officers drove away, circled the block and returned several minutes later to find that § 87(2)(b) and § 87(2)(b) had not moved their car. The officers stopped their vehicle behind § 87(2)(b)'s car and got out. As PO Belle got out, he saw § 87(2)(b) exit his vehicle and § 87(2)(b) shift over from the front passenger seat to the driver's seat. § 87(2)(b) said to PO Belle, "I'm just going to go home. May I go home?" PO Belle told him he could, and § 87(2)(b) started crossing the street towards the westbound lanes of traffic. Both PO Belle and PO Donalds were on the driver's side of § 87(2)(b)'s car, asking for her license and registration when PO Belle noticed that § 87(2)(b) was standing on the median between the eastbound and westbound lanes of traffic, watching the officers talk to § 87(2)(b). There was approximately one traffic lane's distance between § 87(2)(b) and the officers. Because § 87(2)(b) was associated with § 87(2)(b) and because he was standing behind PO Belle, PO Belle ordered to him to come back to the car. § 87(2)(b) did not respond. PO Belle asked a second time. § 87(2)(b) had both hands in his jacket pockets and began walking towards PO Belle. PO Belle told § 87(2)(b) to take his hands out of his pockets, but § 87(2)(b) did not. PO Belle told § 87(2)(b) several times to take his hands out of his pockets, but § 87(2)(b) did not respond. PO Belle then took out his sidearm and pointed it at § 87(2)(b) saying, "Let me see your hands." § 87(2)(b) took his hands out of his pockets. PO Belle holstered his weapon. § 87(2)(b) stood beside § 87(2)(b)'s car while PO Belle and PO Donalds issued her a summons, after which the two officers drove away.

### **Subject Officer: SGT NAOKI YAGUCHI**

- *Sgt. Naoki Yaguchi is § 87(2)(b)*
- *Sgt. Yaguchi is assigned to the 47<sup>th</sup> Precinct. On the day of the incident, Sgt. Yaguchi was working, in uniform, as the desk officer in the stationhouse from 11:05 p.m. to 8:02 a.m.*

### **Memo Book and CCRB Statement:**

Sgt. Yaguchi was interviewed at the CCRB on February 18, 2011 (encl. 12A-B). He had no memo book entries regarding this incident (encl. 11A-C).

On October 10, 2010, at approximately 3:00 a.m., § 87(2)(b) entered the stationhouse of the 47<sup>th</sup> Precinct. The telephone switchboard operator approached Sgt. Yaguchi and told him that § 87(2)(b) wanted to make a complaint. § 87(2)(b) then told Sgt. Yaguchi herself that she wanted to file a complaint. Sgt. Yaguchi asked what happened. § 87(2)(b) told him that she had received a summons for double-parking, and that an officer had drawn his weapon. § 87(2)(b) told him that her boyfriend, who had exited the vehicle, was approaching the officers from behind with his hands in his hoodie pockets, that he was

instructed to remove his hands from his pockets and that he failed to comply. Sgt. Yaguchi explained to § 87(2)(b) the reasons why an officer might draw his weapon when he feels threatened and remembered the conversation as being very cordial. However, because § 87(2)(b) did not ask a second time to make a complaint, Sgt. Yaguchi did not provide her with the complaint forms to fill out. Sgt. Yaguchi did not remember her saying that she no longer wished to make a complaint. After he finished explaining the reasons why an officer might draw his weapon, he thought § 87(2)(b) seemed satisfied, and she left the stationhouse without filing a complaint.

**Witness Officer: PO CHRISTY DONALDS**

- *PO Christy Donalds is § 87(2)(b).*
- *PO Donalds is assigned to the 47<sup>th</sup> Precinct. On the day of the incident, PO Donalds was assigned to Impact, with PO Robert Belle, assigned to RMP # 2138, from 9:30 p.m. to 6:05 a.m.*

**Memo Book and CCRB Statement:**

PO Donalds was interviewed at the CCRB on February 15, 2011 (encl. 8A-B). PO Donalds made a memo book entry relating to this incident at 2:00 a.m. recording § 87(2)(b)'s pedigree information and the double parking summons she issued her (encl. 7A-E).

On October 10, 2010, at around 2:00 a.m., PO Donalds was on patrol with PO Belle, who was the operator of their vehicle, on East 233<sup>rd</sup> Street canvassing the Impact area when they observed that § 87(2)(b) and § 87(2)(b) double-parked in front of § 87(2)(b). There was also a sleeping child in the back seat. The officers informed § 87(2)(b) and § 87(2)(b) that they needed to move. When they returned to 233<sup>rd</sup> Street a few minutes later, they found that the car was still double-parked. § 87(2)(b) was exiting the vehicle and crossing the street, while § 87(2)(b) was shifting from the front passenger seat to the driver's seat. PO Belle stopped the patrol car directly behind § 87(2)(b)'s car and approached the driver's side. PO Donalds stood towards the front of § 87(2)(b)'s car and began filling out a double parking summons. PO Belle stood next to § 87(2)(b)'s window. § 87(2)(b) who was standing on the median in the center of the road, began approaching the officers with his hands in the pockets of the hooded sweatshirt he was wearing. When § 87(2)(b) was approximately seven feet away, PO Belle caught sight of him, turned to face him and said, "Let me see your hands." § 87(2)(b) did not remove his hands from his pockets but continued to walk towards the officers, and said, "What?" In response, PO Belle drew his sidearm. § 87(2)(b) stopped, took his hands out his pockets and raised them. PO Donalds could not remember if PO Belle ever pointed his weapon at § 87(2)(b). PO Belle holstered his weapon and § 87(2)(b) retreated back to the median. PO Donalds finished writing out the summons, which she gave to § 87(2)(b) and then both she and PO Belle left the scene.

**Witness Officer: PO SIDNEY WISE**

- *PO Sidney Wise is § 87(2)(b).*
- *PO Wise is assigned to the 47<sup>th</sup> Precinct. On the day of the incident, PO Wise was in uniform and assigned to the telephone switchboard at the stationhouse from 11:15 p.m. to 7:50 a.m.*

**Memo Book and CCRB Statement:**

PO Wise was interviewed at the CCRB on February 15, 2011 (encl. 10A-B). PO Wise had no memo book entries regarding this incident (encl. 9A-D).

On October 10, 2010, at approximately 3:00 a.m., PO Wise was at the telephone switchboard when § 87(2)(b) entered that stationhouse and asked if he could help her. She said that she had received a ticket for parking on 233<sup>rd</sup> Street and that she wanted to make a complaint. She also mentioned that during the incident an officer drew his weapon. PO Wise pointed to a sign posted in the stationhouse

listing the telephone number for the CCRB, but § 87(2)(b) said she wanted to make a complaint there, at the stationhouse. PO Wise, deciding then to take a cigarette break, invited § 87(2)(b) to step out of the stationhouse with him. Outside, he explained to § 87(2)(b) about the parking conditions on 233<sup>rd</sup> Street. He explained that it is a dangerous street and that it is often subject to conditions patrol. He then went on to mention the CCRB and its function. § 87(2)(b) remained firm in her desire to make a complaint, so PO Wise finished his cigarette and escorted her back into the stationhouse where he referred her to the desk sergeant, Sgt. Yaguchi. PO Wise did not remember how much time passed before Sgt. Yaguchi spoke to § 87(2)(b) nor did he hear their conversation. He did not know whether or not Sgt. Yaguchi ever took a complaint from § 87(2)(b).

### **Status of Civil Proceedings**

- Neither § 87(2)(b) nor § 87(2)(b) has filed a Notice of Claim with the City of New York as of March 10, 2011, with regard to the incident (encl. 19).

### **Civilians Criminal History**

- As of March 14, 2011, Office of Court Administration records reveal no criminal convictions for § 87(2)(b) or § 87(2)(b) (encl. 18A-B).

### **Civilians CCRB History**

- This is the first CCRB complaint filed by § 87(2)(b) (encl. 3A-B).

### **Subject Officers CCRB History**

- PO Robert Belle has been a member of the service for five years and there are no substantiated CCRB allegations against him (encl. 2B).
- Sgt. Naoki Yaguchi has been a member of the service for six years and there are no substantiated CCRB allegations against him (encl. 2A).

## **Conclusion**

### **Identification of Subject Officers**

Both PO Robert Belle and Sgt. Naoki Yaguchi acknowledged interacting with § 87(2)(b) on the date of the incident.

### **Investigative Findings and Recommendations**

#### **Allegation A – Force: PO Robert Belle pointed his gun at § 87(2)(b)**

§ 87(2)(b) alleged that PO Robert Belle pointed his gun at § 87(2)(b). PO Belle acknowledged pointing his gun at § 87(2)(b). PO Belle, § 87(2)(b) and PO Christy Donalds all stated that § 87(2)(b) was approaching PO Belle with his hands in his pockets. According to *Police Department v. Gliner*: “The policy of the Department is that an officer can draw his firearm and point it at another person so long as he has a reasonable fear for his own or another’s personal safety” (OATH Index No. 955/00 [Sept. 6, 2000]). § 87(2)(g)

#### **Allegation B – Abuse of Authority: Sgt. Naoki Yaguchi did not process § 87(2)(b)’s complaint regarding officers**

§ 87(2)(b) alleged that Sgt. Yaguchi did not process her complaint regarding officers. Sgt. Yaguchi acknowledged that he did not process § 87(2)(b)’s complaint after he provided an explanation for PO Belle’s conduct. § 87(2)(b) said that she asked Sgt. Yaguchi if he would take her complaint, and

he answered he would not. In Sgt. Yaguchi's statement, § 87(2)(b) never asked a second time to make a complaint, nor did she say she no longer wished to make one. The fact that § 87(2)(b) filed a CCRB complaint on her own lends credence to her statement that she was unable to make one at the stationhouse of the 47<sup>th</sup> Precinct, as does the statement of PO Wise, who indicated that after he spoke with § 87(2)(b) she insisted on filing a complaint at the stationhouse. According to the patrol guide, the member of service receiving a complaint against a police officer must, "Report all misconduct complaints including unnecessary use of force, abuse of authority, discourtesy, offensive language, etc., to Civilian Complaint Review Board..." Complainants are to be provided with a Civilian Complaint Report to fill out and give back to the officer taking the complaint (p.361, encl. 1). § 87(2)(g)

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Team: 4

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|---------------|-----------|-------|-------|
| Investigator: | _____     | _____ | _____ |
|               | Signature | Print | Date  |

|             |                 |       |       |
|-------------|-----------------|-------|-------|
| Supervisor: | _____           | _____ | _____ |
|             | Title/Signature | Print | Date  |

|           |                 |       |       |
|-----------|-----------------|-------|-------|
| Reviewer: | _____           | _____ | _____ |
|           | Title/Signature | Print | Date  |

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| Reviewer: | _____           | _____ | _____ |
|           | Title/Signature | Print | Date  |